

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 BYRNA TECHNOLOGIES, INC., a Delaware
corporation,

4 Plaintiff,

5 vs.

6 DUKE DEFENSE USA, INC., a Delaware
corporation; BOUGIEFIT, LLC, a Nevada
limited liability company; ZYN APPAREL, a
7 Delaware limited liability company; REILLY
SCHUELER, an individual; BENJAMIN M.
8 FLAM; an individual; JONATHAN COBB
SANDERS, an individual; RANDALL
9 CLIFTON, an individual; DENI STRAHL, an
individual; BRAD THOMAS, an individual;
10 APRIL WOODWARD, an individual; and
TYLER AKIN, an individual,

11 Defendants.

Case No.: 2:21-cv-01559

TEMPORARY RESTRAINING ORDER

[ECF No. 6]

12
13 Plaintiff Byrna Technologies, Inc. filed an *ex parte* motion for a temporary restraining
14 order seeking to enjoin the defendants from using Byrna's trademark and trade secret
15 information. ECF No. 6 at 5. Byrna also seeks an order requiring the defendants to preserve all
16 devices and information that may have a bearing on this litigation. *Id.*

17 Byrna filed the motion *ex parte* because it fears the defendants will destroy evidence in
18 the absence of an order requiring them to preserve it. *See* ECF No. 6-1 at 5. "A party must
19 preserve evidence it knows or should know is relevant to a claim or defense of any party, or that
20 may lead to the discovery of relevant evidence." *Stedeford v. Wal-Mart Stores, Inc.*, 2016 WL
21 3462132, at *5 (D. Nev. June 24, 2016). "A party's duty to preserve evidence begins when
22 litigation is pending or reasonably foreseeable." *Id.* at 4 (quotation marks and citation omitted).
23 Thus, a preservation order should not be necessary because once a party is served with a lawsuit
it is aware that litigation is pending and has a duty to preserve evidence.

1 But if Byrna's allegations about the defendants are true, then the prophylactic effects of
2 court-ordered preservation may carry some additional weight. Byrna alleges that the defendants,
3 while employed by Byrna, copied, downloaded, or improperly transferred Byrna's trade secrets
4 and took Byrna's computers and devices and did not return them. This theft and abuse of
5 Byrna's confidential and trade secret information, if true, would constitute irreparable harm to
6 Byrna. Thus, there is good cause to partially grant Byrna's motion and order the defendants to
7 preserve information, material, and devices.

8 However, Byrna has not offered any basis for an *ex parte* order enjoining the defendants
9 from using the trademarks and information at issue. I will address the motion on an emergency
10 basis. But Byrna fails to justify precluding the defendants from responding to the allegations
11 before I consider imposing severe restrictions on the conduct of their business.

12 I THEREFORE ORDER that plaintiff Byrna Technologies, Inc.'s motion for temporary
13 restraining order (**ECF No. 6**) is **granted in part**. Defendants Duke Defense USA, Inc.;
14 BougieFit, LLC; Zyn Apparel, LLC d/b/a Treezyn; Reilly Schueler; Benjamin M. Flam;
15 Jonathan Cobb Sanders; Randall Clifton; Deni Strahl; Brad Thomas; April Woodward; and Tyler
16 Akin (collectively Defendants) shall immediately preserve all of Byrna's property (and all copies
17 made of such property) in their possession, custody, or control. Such property includes but is not
18 limited to (1) any confidential, non-public information or trade secrets of Byrna; (2) the 64 GB
19 Memory Card, Toshiba External USB 3.0 – Serial No. 20200118012909F, Samsung PSSD T7 –
20 Serial No. S5TCNJ0N600924B, and REALSIL RTSUERLUN0 Drive/Card; and (3) the
21 computer provided by Byrna to defendant Sanders.

22 I FURTHER ORDER the Defendants to not access, copy, transfer, alter, delete or
23 otherwise modify any devices, equipment, or storage service that are the property of Byrna or

1 that contain any confidential, non-public information or trade secrets of Byrna.

2 I FURTHER ORDER the Defendants to preserve and not destroy, alter, or modify any
3 evidence relating to this matter, including but not limited to documents and communications
4 (including any emails, texts, or other messages) concerning (1) their employment with Byrna (or
5 any of its parents, subsidiaries, or affiliates); (2) their work or services performed for or on
6 behalf of Byrna (or any of its parents, subsidiaries, or affiliates) whether as an employee,
7 independent contractor, or otherwise; (3) their communications and interactions with any current
8 or former employee or contractor of Byrna (or any of its parents, subsidiaries, or affiliates);
9 (4) their communications with or on behalf of any current or former supplier, dealer, or vendor of
10 Byrna (or any of its parents, subsidiaries, or affiliates); (5) invoices, bills, or charges to Byrna (or
11 any of its parents, subsidiaries, or affiliates) for third-party goods or services and payments or
12 reimbursements by Byrna (or any of its parents, subsidiaries, or affiliates) for such goods or
13 services; (6) payments and reimbursements received by any of the Defendants from or on behalf
14 of Byrna (or any of its parents, subsidiaries, or affiliates); (7) marketing, advertising, social
15 media, and search engine optimization goods or services provided to, obtained, or procured for
16 or on behalf of Byrna (or any of its parents, subsidiaries, or affiliates); (8) their communications
17 and interactions with any person or entity in direct competition with Byrna, including any of
18 Byrna's respective employees, officers, agents, or representatives.

19 I FURTHER ORDER Byrna to serve the Defendants with copies of all papers filed in this
20 case, including this Order, by Wednesday, August 25, 2021.

21 I FURTHER ORDER that if Byrna files a new motion for temporary restraining order or
22 preliminary injunction, the defendants may file a response within four business days of service of
23 that motion. Byrna may file a reply within two business days of service of the defendants'

1 response. I will set a hearing on the motion if necessary.

2 I FURTHER ORDER that, given the limited nature and scope of this injunction, no
3 security is required under Federal Rule of Civil Procedure 65(c).

4 This order shall remain in effect for 14 days absent further order of the court.

5 ENTERED this 24th day of August, 2021 at 8:59 a.m.

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9 Andrew P. Gordon
10 United States District Court Judge
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